IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 29 OF 2003

IN

SUMMARY SUIT NO. 3291 OF 2002

M/s. S. P. Jagdish & Co. ..Plaintiffs

versus

Standard Chartered Grindlays

Bank & Ors. ..Defendants

Mr. S. K. Jain with Ms. Naina Desai for the Plaintiffs.

Mr. M. Siodia i/b. Rustamji & Ginwala for Defendant Nos. 1 to 3.

Ms. M. Monteiro for the Defendant No.4.

CORAM : D. G. DESHPANDE,J.

DATE ; 20TH SEPTEMBER, 2004.

P.C. :

. Heard Advocate for the Plaintiffs and the Defendant No.4. The plaintiffs press claim on Exhibit 'A' dated 22.6.2001 and Hundi and Exhibit 'B' dated 11.7.2001 and Hundi. Defendant No.4 Punjab National Bank were under obligation to pay to the plaintiffs an amount of Rs.1,50,080/- and Rs.1,56,855/=. They had in fact sent that amount by two demand drafts sent in one envelope to the Bombay

office of the plaintiffs. Somebody caught hold of that envelope containing two demand drafts, opened an account in the defendant No.1 bank in the name of the plaintiffs and withdrew the amount. Suit is therefore filed against defendant No.1, 2 and 3 but mainly summons for judgment is against defendant No.4 - Punjab National Bank.

. Advocate for the Defendant No.4 contended that the plaintiffs have in the plaint claimed "damage and loss" which according to her is a matter of investigation and trial. Secondly, she contended that there is no written agreement and Exhibits 'A' and 'B' do not constitute any written agreement. I do not find any merit in any of these two submissions. Exhibits 'A' and 'B' are letters written by the plaintiffs requiring defendant No. 4 - Punjab National Bank to do certain things. By sending two demand drafts at the office of the plaintiffs at Bombay Defendant No.4 - Punjab National Bank has shown that they had accepted the terms and conditions of Exhibits 'A' and 'B'. Therefore this acceptance completes the agreement and contract enforceable at law. Secondly, it is an admitted fact that Exhibits A and B creates a liability against the defendant No.4 vis-a-vis the plaintiffs and even though the demand drafts were sent, the liability is not discharged by defendant No.4 because the plaintiffs did not receive those

drafts. If somebody else received those drafts and encashed them, the remedy of the defendant No.4 is to find out the persons behind this and claim that amount from them, but their liability as against the plaintiff cannot and does not come to an end.

. If the borrower for example sends a draft of loan instalment to the bank from which he has borrowed the loan and if that draft is taken over by somebody and misappropriated, the bank will never give credit to the borrower for the amounts sent by him, which they have not actually received. The same analogy will apply here. The plaintiff did not get the drafts sent by the bank, therefore, liability of the bank does not cease.

. Thirdly, it is true that in the plaint the words "loss and damage" has been used but what is claimed by the plaintiffs is on the basis of Exhibits 'A' and 'B' and as principal amount. Therefore mere terming the amount as loss and damage, does not take away the matter from Order XXXVII. Therefore, so far as defendant No.4 is concerned, conditional leave to defend the suit is granted on their depositing Rs.3,77,000/= within six weeks from today. So far as defendant Nos. 1, 2 and 3 are concerned unconditional leave to defend the suit is granted to them. Advocate for the plaintiffs state that he is not claiming any decree against defendant No.5. Suit be transferred to

commercial causes.

. Certified copy expedited.

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